

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
BRUNSWICK DIVISION

U.S. DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA

2005 SEP -9 AM 9:57

CLERK *J. Taylor*
SO. DIST. OF GA.

UNITED STATES OF AMERICA

v.

GENE MIDDLETON

CASE NO.: CR205-25

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Defendant Gene Middleton ("Middleton") filed a Motion to Dismiss the Indictment. Middleton contends that possession of a firearm by a convicted felon in Georgia has nothing to do with commerce or any sort of economic activity. Middleton asserts that statutes such as the one he has been charged with violating, 18 U.S.C.A. § 922(g)(1), do not contain a jurisdictional element to ensure that the possession of a firearm has any concrete tie to interstate commerce. Middleton alleges that § 922(g)(1) is unconstitutional because his possession of a firearm is not an activity which substantially affects interstate commerce.

Section 922(g)(1) provides:

(g) It shall be unlawful for any person—

(1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year . . . to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

Pursuant to the Commerce Clause, Congress can regulate three broad categories of conduct: the use of channels of interstate commerce; the instrumentalities of interstate commerce, or persons or things in interstate commerce, even if the threat arises solely from intrastate activities; and activities that have a "substantial relation to interstate commerce." United States v. Lopez, 514 U.S. 549, 558-59, 115 S. Ct. 1624, 1629-30, 131 L. Ed.2d 626 (1995).

In Lopez, the Supreme Court invalidated 18 U.S.C.A. § 922(q), the Gun-Free School Zones Act, and determined that making it a federal offense for any individual to knowingly possess a firearm at a place that the individual knows or has reasonable cause to believe is a school zone exceeded Congress' Commerce Clause authority. The Court determined that possession of a gun in a local school zone was not an economic activity that substantially affected interstate commerce. Lopez, 514 U.S. at 559-62, 115 S. Ct. at 1630-32. In contrast to § 922(q), "to effectuate a constitutional conviction under § 922(g)(1), . . . the government [is required] to demonstrate that the firearm possessed traveled in interstate commerce." United States v. Clay, 355 F.3d 1281, 1286 (11th Cir. 2004) (quoting United States v. Scott, 263 F.3d 1270, 1275 (11th Cir. 2001)).

The Government avers that a showing will be made at trial that the firearm Middleton possessed was manufactured outside of Georgia. The Government also avers that this prospective showing fully satisfies the jurisdictional requirements of section 922(g)(1). At this time, it appears that the Government has set forth sufficient allegations in support of its desired prosecution of Middleton under § 922(g)(1), the felon-in-possession statute. In addition, Middleton has failed to establish that section 922(g)(1) exceeds Congress' power to regulate under the Commerce Clause.

CONCLUSION

Based on the foregoing, it is my **RECOMMENDATION** that Middleton's Motion to Dismiss the Indictment (Doc. No. 19) be **DENIED**.

SO REPORTED and **RECOMMENDED**, this 9th day of September, 2005.



JAMES E. GRAHAM
UNITED STATES MAGISTRATE JUDGE

United States District Court
Southern District of Georgia

UNITED STATES OF AMERICA

vs.

MIDDLETON

CASE NO. CR205-25

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The undersigned, a regularly appointed and qualified deputy in the office of this Clerk of this District, while conducting the business of the Court for said Division does hereby certify the following:

- 1 Pursuant to instructions from the court, and in the performance of my official duties, I personally placed in the U.S. Mail a sealed envelope bearing the lawful frank of the Court, and properly addressed to each of the persons, parties or attorneys listed below;
and
2. That the aforementioned envelope(s) contain a copy of the documents known as R & R and order dated 9/9/05, which is part of the official records of this case.

Date of Mailing: 9/9/05
Date of Certificate: 9/9/05

SCOTT L. POFF, CLERK

By

: Sherry Taylor, Deputy Clerk

NAME:

1. Fred Kramer
2. Joe Newman
3. Richard Phillips
4. Gene Middleton, Route 1, Box 193, Ludowici, GA 31316
5. _____
6. _____
7. _____

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| <input type="checkbox"/> | <input type="checkbox"/> | Cindy Reynolds |

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SOUTHERN DISTRICT OF GEORGIA
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